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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1786th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 19 October 1999, at 3 p.m.

Chairman: Ms. MEDINA QUIROGA

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* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.1786/Add.1.

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 6) (continued)

Fourth periodic report of Norway (CCPR/C/115/Add.2 and CCPR/C/65/L/NOR) (continued)

1. At the invitation of the Chairperson, the members of the delegation of Norway resumed their places at the Committee table.

2. The CHAIRPERSON invited the Norwegian delegation to continue replying to the follow-up questions put orally by members of the Committee.

3. Mr. WILLE (Norway) stated that article 2 of the Norwegian Constitution, which laid down that persons professing the Lutheran evangelical religion must bring up their children in that faith, featured in the 1814 Constitution, some of whose provisions, albeit they no longer had the same purport in the contemporary world, had not been revised. However, as indicated in paragraph 213 of the report, that provision constituted only a moral obligation for parents. With regard to religious and moral instruction in schools, persons belonging to the Church of Norway were entitled to request that their children should be partially exempted from those classes. Such an exemption could be accorded if the parents had a different philosophy of life or a different faith without their having to break their ties with the Church of Norway or disclose their religion. Teachers, for their part, were required to give religious instruction even if they were not members of the Church of Norway.

4. In reply to the question about taxes collected on behalf of the Lutheran Church, the fact was that all religious communities registered in Norway received State subsidies. As to whether employers could inquire into the religious beliefs of prospective employees, article 55 (a) of the Labour Code prohibited employers from trying to discover a person's religion unless the job in view made it necessary.

5. In answer to the question about the Sami people, he said that the legal system proposed by the Committee on Sami Rights had been extended, in particular with regard to Sami land rights in Finnmark and the rest of the country. It had also been proposed that an article dealing with the status of the Sami people should be added to the Constitution. Furthermore, the powers of the Sami Parliament had been increased. The Norwegian authorities considered, too, that it was their duty to protect the Sami language, which was, he added, the subject of a special provision of the Constitution. On the question of discrimination against minorities, it should be noted that Norway had ratified the European Convention on Minorities. The Sami had, however, a special status insofar as they constituted both a minority and an indigenous people. They therefore belonged to a different category and got different treatment, which it would be incorrect to equate with discrimination.

6. Concerning reservations to treaties, the Government had put into effect a plan of action for reviewing all the reservations it had made to human rights treaties.

7. In reply to a question about residence permits and asylum-seekers, the statistics for 1998 showed that, of the asylum-seekers who had been authorized to stay in Norway, 4.6 per cent had been granted asylum and 95 per cent had been given a residence permit. There was little difference in practice between a residence permit granted for humanitarian reasons and right of asylum. The differences in treatment with regard to family reunification had been reviewed so that more or less the same arrangements would apply to members of both groups. Regarding pension rights, persons granted right of asylum were accorded full entitlements after three years' residence in Norway, while the waiting period was longer for foreigners holding a residence permit. Finally, in answer to the question that had been put concerning legislation on states of emergency, he said that the legislation currently applicable dated from 1950, a study was in progress with a view to amending it but had not yet been completed.

8. Ms. INDREBERG (Norway), answering a question concerning orders for administrative detention, said that such orders could be appealed against in accordance with Chapter 33 of the Code of Civil Procedure, article 478 of which stipulated that the court must consider the matter as promptly as possible. Furthermore, any person affected by an administrative detention order was given free legal aid. Concerning the rules governing solitary confinement, there could be two different situations. Firstly, persons held in pre-trial detention could be separated from other prisoners if the conditions specified in article 86 of the Code of Criminal Procedure were met; however, such a measure could be applied only by court order. Secondly, with regard to accused persons, the authorities were currently preparing a new prison act that would modify the regime applicable to them. As the law currently stood, such persons could be held in isolation for a maximum of one month.

9. Finally, regarding collaboration with other countries in cases of sexual abuse committed against children abroad, Norway had carried out programmes on the question, in particular in Thailand, and cooperation in that sphere had been instituted with the Baltic countries.

10. Ms. VINNES (Norway), answering a question about equality between the sexes, said that an amendment which had been proposed to the 1978 law on equality between men and women would make it possible for the principle of "equal pay for equal work" to be effectively applied in one specific firm insofar as a comparison could be made there. Concerning measures to combat violence against women, the Ministry of Health and Social Affairs was currently preparing a plan of action to combat discrimination and violence against women for presentation at the end of 1999. The content of the plan was not yet fully known, but it provided for the existing capabilities of the police in that area to be re-evaluated.

11. In reply to the question raised about telephone monitoring that had not led to any charges being brought, she said that Parliament had currently before it a new draft law containing a provision whereby any person would be entitled to ask the competent authority whether or not he or she had been subjected to monitoring. There were, however, exceptions applicable in particular to certain criminal matters and to monitoring with a bearing on State security.

12. Regarding children's right to know their parents' identity, a clause in chapter 12 of the law of February 1986 on adoption provided that, as soon as they considered it appropriate, the adoptive parents should inform the child that he or she had been adopted. Then, upon reaching 18 years of age, children could apply to the Ministry of Social Welfare or their local governor

and ask to be told their parents' identity. Likewise, the Government was currently preparing an amendment that would also allow children conceived by artificial insemination to know who their parents were. Again regarding adoption, the law prescribed procedures applicable to couples wanting to adopt a child abroad. Their background was investigated by the local welfare services and the findings were communicated to the office responsible for adoptions, whose approval was required. Once the authorization had been obtained, the actual adoption was organized by two or three private bodies licensed by the public authorities.

13. A new passport act had been adopted on 19 July 1997, specifying the rules applicable for obtaining a passport: the applicant must be a Norwegian citizen, must provide proof of his or her identity, and must appear in person when making the application. For its part, the administration must state the reasons for its decision in case of refusal to issue a passport. Additional information on that question would be given in Norway's next periodic report.

14. In reply to the question about right of peaceful assembly, the police act provided that the organizers of such an assembly had simply to inform the police when, for reasons of urgency, it had not been possible to obtain prior authorization, and the organizers of such peaceful assemblies were not usually prosecuted.

15. As to whether the procedure instituted by the Appeals Board provided an effective remedy in all penal cases, the answer was that the procedure had hitherto given full satisfaction. Regarding extremist activities, the same rules applied to nationals as to foreigners, certain activities being subject to a general prohibition. In reply to the question about the political rights of foreigners, she said that foreigners who had lived for at least three years in Norway had the right to vote in municipal elections. Finally, it was true that a strike could be brought to an end by compulsory arbitration and that Norway therefore maintained its reservations to article 8 of the International Covenant on Economic, Social and Cultural Rights.

16. Ms. INDREBERG (Norway), answering the question put concerning the Court Commission that had been asked to study the internal administration of courts in Norway, said that the Commission would be submitting its report at the end of 1999. The majority of members of the Commission had proposed the adoption of a new system whereby the courts would be administered by an independent body under the direction of a council elected partly by the deputies and partly by the Government, while a minority of the Commission's members wanted the administration of the courts to continue to be entrusted to the Ministry of Justice.

17. The new law against discrimination on ethnic grounds would contain provisions dealing with both the civil and the penal aspects of that type of discrimination and would set up surveillance mechanisms. Finally, as to whether persons placed in pre-trial detention and then found innocent were entitled to compensation, she stated that according to the Penal Code such persons were entitled to compensation provided they proved their innocence. In response to criticisms of that provision, a report on the question had been called for and new rules would be proposed making compensation easier to obtain.

18. Ms. VINNES (Norway), responding to the queries raised concerning the role of the various ombudsmen operating in Norway, said there was no ombudsman specially responsible for human rights, the promotion and enforcement of those rights being in fact in the remit of all

of them. There were, firstly, the parliamentary ombudsman for public administration, secondly the ombudsman for the armed forces and national civil service, thirdly the ombudsman (or commissioner) for children, fourthly the ombudsman for equality between the sexes, and fifthly the consumers' ombudsman. It could nevertheless be supposed that human rights questions would be more particularly dealt with by the ombudsmen for public administration, children and equality between the sexes.

19. The CHAIRPERSON thanked the Norwegian delegation and invited members of the Committee who so desired to take the floor again on any questions remaining unanswered.

20. Mr. SCHEININ asked first for particulars of the duration of the procedure for judicial review of certain forms of administrative internment. The delegation had said that it was very short but he wondered whether that meant five days, two weeks or a month. His second question concerned the exemption from religious instruction that parents could request for their children. Must parents disclose their religious or philosophical beliefs when requesting such exemption or was it enough for them to state that religious instruction was incompatible with their beliefs?

21. Mr. BHAGWATI asked for clarification on three points. Firstly, concerning the practice of resorting to compulsory arbitration as an expedient for banning a strike, the delegation had mentioned Norway's reservation to article 8 of the International Covenant on Economic, Social and Cultural Rights. Nevertheless, Norway had ratified ILO Convention No. 29 and had thus committed itself to not banning a strike by imposing compulsory arbitration; what was more, it had not submitted any reservation to article 22 of the Covenant. Consequently, the right to freedom of association recognized therein entailed the right to exercise trade union rights. Was Norway considering the enactment of a law abolishing compulsory arbitration?

22. Secondly, he asked whether the Court Commission headed by the Chief Justice of the Supreme Court (para. 149 of the report) had made any recommendations on the procedures for appointment or dismissal of judges, which was currently the responsibility of the executive. Was the Norwegian Government considering any change to that practice? Thirdly, he would like to know whether, before the entry into force of the Human Rights Act, the Covenant had had precedence over domestic legislation and, if so, whether there were any examples of cases that had been decided by giving preference to the provisions of the Covenant.

23. Lord COLVILLE asked for a fuller reply to his question about the competence of the Supreme Court as a court of appeal. Even if such cases were very rare, it could happen that a person acquitted by a lower court was found guilty by the Supreme Court upon appeal by the public prosecutor. That was a matter for deep concern, because a person thus condemned was left absolutely without remedy. Could the Norwegian delegation provide any clarification on the subject?

24. Ms. EVATT said she still felt concerned about asylum-seekers, particularly those residing illicitly in Norway and therefore liable to be expelled before a final decision was taken on their application for asylum. In that case they would not be safe from refoulement or expulsion to a country where they would be at risk of torture or other abuses. Could the delegation provide clarification on that subject?

25. Mr. WILLE (Norway), answering Ms. Evatt, said it was indeed possible for persons to be sent back to their countries before their applications for asylum were adjudicated. His delegation had no figures to hand, but Norway sent back relatively fewer asylum-seekers than did other countries in general before a final decision had been taken. With regard to guarantees for protecting such persons against the risk of being sent back to countries where they might be victims of torture or ill-treatment, Norway had embodied a non-refoulement clause in its legislation on aliens. Accordingly, the Norwegian aliens department took that factor into consideration in studying the relevant case files before taking a decision.

26. With regard to compulsory arbitration, the Government could not put an end to a strike without a law being passed by Parliament, before the cessation of the strike or afterwards if it had not been possible to do it before.

27. Ms. VINNES (Norway), in answer to Mr. Scheinin, confirmed that it was enough for parents who asked for their children to be exempted from religious instruction to state that such teaching would be contrary to their philosophy of life, without having to say what their beliefs were.

28. Ms. INDREBERG (Norway) said it was difficult to answer Mr. Scheinin's question about the duration of the procedure for judicial review of an administrative internment order. The law stated that the court must decide as quickly as possible, and that provision was taken very seriously. Obviously, however, the time taken depended on the nature of the case, on whether an expert had to be called in, etc. Certainly, however, that type of case was dealt with rapidly.

29. In reply to Mr. Bhagwati's question, she said that the Court Commission had in fact studied the procedures for appointment and dismissal of judges and its recommendations were being closely examined by the Ministry of Justice. It should be noted that the Norwegian Government had absolutely no power to dismiss judges, such action required a judicial decision. In any case, however, the question was under consideration and would be dealt with in Norway's next periodic report.

30. As to whether the Covenant had ever been given precedence over domestic legislation in a judgement, the answer was no, the reason being that the courts had not yet been faced with a conflict between Norwegian law and the Covenant.

31. In reply to Lord Colville, she confirmed that cases where a person acquitted in a court of first instance had been found guilty by the Supreme Court on appeal by the public prosecutor were extremely rare. One such case had been submitted to the European Court of Justice, which had determined that for the Supreme Court to have pronounced guilty a person acquitted in a court of first instance was a violation of the European Convention for the Protection of Human Rights. Since that ruling, if the Supreme Court of Norway determined that the lower court ought to have found the accused guilty, it sent the case back to the lower court. Norway might possibly consider amending its legislation, but that would be after thorough examination.

32. Mr. YALDEN raised two questions about equal pay for men and women. Firstly, in order to assert their right to equality of pay with men, did women have to institute proceedings

themselves or could it be done by a third party or a body competent in that regard? Secondly, once the proceedings had been instituted, was the end result an order or injunction to raise the contested salary and would that constitute an enforceable decision?

33. Ms. INDREBERG (Norway) noted that the application of article 3 of the Covenant had been covered in detail in the third periodic report of Norway (CCPR/3/70/Add.2, paras. 24 to 37), which indicated in particular the agencies set up to ensure equality of rights between men and women, namely the ombudsman responsible for questions of equality between the sexes and the Appeals Board. In pursuance of the law concerning equality between the sexes, those two bodies examined cases concerning the private sector and the public sector, which could be brought before the ombudsman and the Appeals Board by the women petitioners themselves or else by their trade unions. If the conflict was about the validity of a pay agreement, it was a special tribunal, competent on questions of remuneration for work, which would decide.

34. Mr. LALLAH referred back to the Norwegian delegation's reply to Mr. Scheinin's question about the duration of the procedure for judicial review of an administrative decision to place someone in detention. Taking a case where release on bail had been refused and where the offence of which the detainee was accused rated a penalty of not more than six months, what happened if the detention was extended beyond six months? Aware that the problem was not exclusive to Norway, he would like to know what was the remedy, or the compensation, provided for in such a case.

35. Ms. INDREBERG (Norway) said that the rules she had referred to in her reply to Mr. Scheinin were those governing the civil procedure concerning administrative decisions for committal to detention. Regarding the penal procedure, which was what Mr. Lallah was referring to, the rule in Norway was that a person must be brought before the court the day following his arrest; if that was not done, the court must expressly state why, and in practice the court appearance was never delayed for more than four days. The hypothetical situation postulated by Mr. Lallah could arise, but it was far from frequent. If the acts of which the person was accused carried a penalty of less than six months, the case was obviously a simple one that the court would be able to decide quite quickly.

36. The CHAIRPERSON thanked the Norwegian delegation for its brief, precise and yet detailed replies to the written questions in the list of issues to be taken up and for then endeavouring to answer the questions put orally by members of the Committee. Norway should also be thanked for having taken account in its report of the recommendations put forward by the Committee in the light of its consideration of the previous report.

37. It was clear that the members of the Committee were impressed by the progress achieved in Norway in the human rights sphere, in particular the recent passing of an Act incorporating the international human rights instruments into the Norwegian legal system. She herself had been slightly disappointed to learn that the Act could be repealed or amended by a subsequent act, i.e. that in reality the international human rights instruments would have no effect on subsequent legislation. Nonetheless, the Norwegian parliament, people and government being what they were, she was hopeful that parliament would not avail itself of that possibility. The incorporation of the Covenant into the domestic legal system was always important, not only for the country itself, but also because it conveyed a message to other countries. As case law was

built up in the Norwegian courts on the basis of the provisions of the Covenant and the human rights instruments, those precedents enhanced the development of international human rights law and the international agencies themselves could refer to them in turn.

38. Also worth mentioning was the effort being made in Norway to integrate men and women into professions other than those they traditionally occupied, thus also contributing to an overall evolution which should help put an end to the discrimination from which women suffered.

39. The Committee welcomed as a hopeful development the announcement that certain aspects of the Norwegian legal system which, in practice, might raise difficulties in relation to the Covenant were being reviewed, in particular the reservation filed to article 14, paragraph 5; for indeed the possibility of appealing against a penal sentence was of fundamental importance for the rights of the human individual.

40. Foremost among the subjects about which the Committee as a whole had expressed concern was the problem posed by the existence of article 2 of the Constitution establishing a State religion (para. 212 of the report). The provision concerned admittedly dated from the previous century, but its presence in the Norwegian Constitution struck a discordant note in view of the universality of human rights and could even, as Mr. Lallah had said, lead to discrimination. The fact that the State religion enjoyed certain facilities not accorded to other religions constituted discrimination; there were, for example, the problems of teachers being required to give religious instruction, members of the State church having to comply with certain conditions, and parents being obliged to ask for exemption if they did not want their children to attend the religious instruction classes. Those were questions which Norway would do well to study in depth.

41. The possibility of expelling an asylum-seeker before a decision was taken on his application was a subject for concern, even if Norway had incorporated the non-refoulement clause into its regulations. An asylum-seeker who was expelled when he was eventually going to be accorded refugee status would face innumerable problems in again applying for asylum if he had been sent back to his country. There again was a practice that Norway would do well to re-examine seriously.

42. A fuller explanation would have been desirable concerning confiscation of passports (para. 126 of the report), a practice that might raise difficulties in connection with article 12 of the Covenant (liberty of movement). The Committee was also concerned about the practice of administrative detention and the risks of its duration being extended, even if there existed a possibility of the decision being reconsidered by a tribunal.

43. Despite all those subjects of concern, Norway deserved to be warmly congratulated for everything it had done in the human rights field, thereby benefiting not only the Norwegian people but the peoples of the world in general. At the same time, Norway was invited not to forget the obligation it lay under to preserve that aspect of public order represented by international human rights law, and to make sure that it utilized all the possibilities offered by international law for obtaining full respect for human rights on the part of other countries, applying to that end the legal, political or diplomatic means available to States.

44. Mr. WILLE (Norway) in turn thanked the Committee members for the fair and constructive spirit in which the examination of his country's fourth periodic report had been conducted. His delegation had taken careful note of the comments made and would transmit them to the authorities concerned. It was fully aware that the application of the rights proclaimed in the Covenant could be further improved in Norway, declared that steps would be taken to that effect; and assured members that Norway always attached the highest importance to the deliberations and observations of the Committee.

45. The CHAIRPERSON declared that the Committee had completed its examination of the fourth periodic report of Norway.

46. The Norwegian delegation withdrew.

The public part of the meeting rose at 4.25 p.m.